

Civil Society Concerns and Rejection of the Asian Development Bank's Dangerously Flawed Assessment of Indonesia's Energy Sector (PLN), Lack of Meaningful Consultations, and Proposed use of Country Systems for Indonesia's Energy Sector

January 2018

Endorsed by

The Indonesian Legal Resource Center (ILRC); The Ecological Justice; Eksekutif Nasional WALHI; WALHI Jawa Barat; WALHI Sulawesi Selatan; Lembaga Studi dan Advokasi Masyarakat (ELSAM); debtWATCH Indonesia; Solidaritas Perempuan; Yayasan PUSAKA; TuK Indonesia; LinkAR Borneo; Kesatuan Nelayan Tradisional Indonesia (KNTI); Jaringan Kerja Rakyat Papua (JERAT Papua); Konfederasi Pergerakan Rakyat Indonesia (KPRI); Partai Rakyat Pekerja (PRP); Konfederasi Serikat Nasional (KSN); Yayasan CAPPK Keadilan Ekologi; AURIGA; WALHI Kalimantan Tengah; JPIC Kalimantan; PROGRESS Kalimantan Tengah; Serikat Petani Pasundan (SPP); WALHI Jambi; WALHI Sumatera Barat; WALHI Kalimantan Barat; WALHI Sumatera Selatan; WALHI Nusa Tenggara Barat; Institute for National and Democracy Studies (INDIES); Aliansi Gerakan Reforma Agraria (AGRA); P3I (Persatuan Pergerakan Petani Indonesia); LPM Equator Kalbar; WALHI Kalimantan Selatan; WALHI Papua; WALHI Aceh; WALHI Jawa Tengah; WALHI Sulawesi Tengah; Sentra Advokasi Untuk Hak Pendidikan Rakyat (Sahdar); WALHI Maluku Utara; KRUHA; Trade Union Rights Center (TURC); WALHI Sulawesi Tenggara; WALHI Bali; Sawit Watch; Pusat Kajian dan Perlindungan Anak (PKPA); Rimbawan Muda Indonesia (RMI); WALHI Bangka Belitung; WALHI Sumatera Utara; WALHI Bengkulu; WALHI Sulawesi Utara; Jaringan Masyarakat Gambut – Jambi, Indonesia 350, Asia Pacific Forum on Women, Law and Development (Asia-Pacific), Oil Workers' Rights Protection Organization Public Union (Azerbaijan), Ekomed, Public Union Organization (Azerbaijan), Center for Participatory Research and Development-CPRD (Bangladesh), CNCD-11.11.11 (Belgium), 11.11.11 (Belgium / Philippines), Social Justice Collective (Canada), Collectif Camerounais des Organisations des Droits de l'Homme et de la Démocratie (COCODHD) (Cameroun), The Observatoire d'Etudes et d'Appui à la Responsabilité Sociale et Environnementale (OEARSE) (Democratic Republic of Congo), International Workgroup for Indigenous Affairs (Denmark), CEE Bankwatch Network (Europe), Worldview (The Gambia), Green Alternative (Georgia), Urgewald (Germany), Abibiman Foundation (Ghana), Greener Impact International (Ghana), International Rivers (Global), National Society of Conservationists - Friends of the Earth Hungary, Indigenous Perspectives (India), Rivers without Boundaries International Coalition (International), Friends of the Earth Japan, Japan Center for a Sustainable Environment and Society (JACES), Center for Introduction of New Environmentally Safe Technologies (Kazakhstan), IP Hub Africa (Kenya), Jamaa Resource Initiatives (Kenya), Nash Vek PF (Kyrgyzstan), Oyu Tolgoi Watch (Mongolia), Rivers without Boundaries Coalition (Mongolia), Centre for Human Rights and Development (Mongolia), People's Coalition for Food Sovereignty (Mongolia), Development Observer (Mongolia), Community Empowerment and Social Justice Foundation (CEmSoJ) (Nepal), All Nepal Peasants' Federation, Balkhu, Kathmandu (Nepal), National Women Peasants Association (Nepal), Nepal Youth Peasants Organization (Nepal), Landless Farmers and Dalit Peasants Association (Nepal), Nepal Agriculture Labour Association (Nepal), National Alliance for Right to Food Networks (Nepal), National Alliance for Tax and Fiscal Justice (Nepal), South Asia Peasants Coalition, HQ, Kathmandu (Nepal), South Asia Food Sovereignty Network, HQ, Kathmandu (Nepal), Both ENDS (Netherlands), BIC Europe (Netherlands), Derecho, Ambiente y Recursos Naturales (Peru), NGO Forum on ADB (Philippines), Sri Lanka Nature Group (Sri Lanka), Centre for Environmental Justice/FoE Sri Lanka, Friends with Environment (Uganda), Buliisa Initiative for Rural Development Organisation (BIRUDO) (Uganda), The Corner House (UK), Forest Peoples Programme (UK), The Bretton Woods Project (UK), Ulu Foundation (US), Friends of the Earth U.S., International Accountability Project (US), Bank Information Center (US), Center for International Environmental Law (CIEL) (US), Inclusive Development International (US), Gender Action (US), Crude Accountability (US).

EXECUTIVE SUMMARY	3
PROCESS PROBLEMS:	4
Violations of ADB's Consultation and Disclosure Requirements	4
Safeguard violation: Lack of Meaningful Consultation on ADB's CSS Assessments	4
Safeguard violation: failure to fully disclose documents. Missing field studies & desk studies.	4
CONTENT PROBLEMS	5
1) Overwhelming Lack of Equivalence	5
2) Fatal Flaws in CSS: Lack of Meaningful Consultation and Attention to Women, the Poor, the Vulnerable, those Without Land Title	6
3) ADB Claims These Major Problems are merely "Minor Gaps", easily "filled"	7
4) So-called "Gap-filling measures": Not credible	8
5. "Gap-Filling" in conditions of routine failure of rule of law: not credible; "Gap-filling" as violation of principle of rule of law;	8
6. ADB's Continuing Failure to Assess Security Force Violence	9
7. Lack of mitigation hierarchy to avoid impacts: Land acquisition and evictions	9
8. Landgrabbing: Lack of compensation at replacement value prior to eviction.	9
9) Manufacturing fake equivalence by dividing up policy requirements into small pieces and trying to find small "equivalent" phrases despite an overall context of lack of equivalence.	10
10) Lack of SPS Compliance - Inventing New Weak Measures: "Broad Alignment" instead of SPS Required "Equivalence." Example: Lack of Equivalence with ADB Resettlement Objectives	11
11) Faked Acceptability "Ratings" – Where "Moderate Acceptability" Is Code for "Weak / Unacceptable"	12
12. Financial Intermediaries: Indonesian Environmental Assessment Requirement Does Not Apply to Financial Intermediaries.	16

Executive Summary

The Indonesian Constitution states that "the earth, the water and all the riches in it are used for the greatest good of the life of the people". Therefore, we believe that the management of the earth, water and all the wealth must use the highest standards in environmental management so that the country's wealth continues to be sustainable and the results bring benefits to the majority of Indonesian people, including by paying special attention to vulnerable groups, women, the elderly, the poor, indigenous peoples and those without title to land.

The ADB's CSS assessment developed for Indonesia's energy sector is not only plagued by continued violations of ADB's meaningful consultation and information disclosure requirements which began with the ADB's March 2017 ADB CSS assessment. It documents that Indonesia's "country system" is only fully equivalent with a mere 25% (3 of 12) mandatory ADB Involuntary Resettlement Principles and with only 6 of 11 of the ADB's mandatory Environment Principles. The ADB's own assessments document the fact that Indonesia's "national system" simply does not require, nor have a track record of implementing, the majority of the ADB's most basic core safeguard requirements, including:

- No requirement for meaningful consultation, including with the vulnerable, women, those without land title, free of coercion, as defined by the ADB;
- No attention to gender issues, impacts on women, who make up 50% of affected people and who likely bear more than 50% of project impacts;
- No attention to the poor, to the vulnerable – the supposed "beneficiaries" of development;
- Lack of attention to those without land title – the majority of Indonesian citizens and the vast majority of the poor;
- Complete lack of monitoring of impacts of forced resettlements on all impacted people.
- Failure to require 120 day public comment period on projects with significant impacts;
- Lack of biodiversity protection – causing Indonesia to become the largest deforestation site on earth.
- No requirement for a mitigation hierarchy, which requires – by law -- the top goal of *avoiding* environmental and social impacts and – if, and only if, avoidance is not possible, reducing the impacts - including through meaningful consultation, free of coercion, as per ADB requirements.

Despite decades of history of failure to implement these most fundamental aspects of environmental protection (leading, among other things, to Indonesia having the highest deforestation rate on earth and tremendous urban environmental pollution, including in Jakarta) and failure to require or enforce core aspects of social protection (leading to thousands of conflicts where the threat of violence is routinely used to force the poor from their lands), this flawed draft study claims that all of these failures represent "minor gaps" in equivalence with mandatory ADB requirements.

In addition to the outrageous assertion that failing to involve, monitor impacts upon, or ensure that livelihoods are improved and not destroyed for the poor, the vulnerable (ostensible "beneficiaries" of development), for women (50% of the affected), those without land title (the vast majority of Indonesia's poor), the ADB's draft analysis claims that, unlike the ADB-supported legislative changes the Bank felt necessary to protect the interests of project proponents, no legislative changes are needed to overcome these "minor" problems.

Instead, astonishingly, the ADB claims that the use of voluntary "Corporate Social Responsibility" programs and funds (which may not be used for compensation purposes according to PLN, Indonesia's national energy company) will be a key "gap-filling measure" to make up for resettlement impacts on the poor and vulnerable:

"54. PLN's corporate social responsibility (CSR) program can be used to ensure that affected people from PLN infrastructure projects receive compensation and support".¹

¹ ADB, Report on the Equivalence and Acceptability Assessments for the State Electricity Company of Indonesia (Consultation Draft), Appendix1: Consolidated Equivalence Assessment, para 54.

ADB also claims that the so-called “minor gaps” in Indonesia’s environmental and social protections can be “filled” by the issuance of internal agency rules or decrees - i.e. decrees by the Board of Directors of Indonesia’s notorious National Electricity Company (PLN) or by the development of “Comprehensive Guidance” by PLN which, according to the ADB’s assessment, will be sufficient to reverse Indonesia’s well-documented track record and lack of legal requirement for the fundamental underpinnings of safeguard compliance. These claims are not remotely credible, as even a cursory examination of PLN’s track record – including as documented by the ADB – clearly demonstrates.

Process problems:

Violations of ADB’s Consultation and Disclosure Requirements

Safeguard violation: Lack of Meaningful Consultation on ADB’s CSS Assessments

- In March 2017, the ADB failed² to conduct meaningful consultations on a deeply flawed and inaccurate draft assessment of Indonesia’s CSS which incorrectly claimed that Indonesia’s Energy and Water sectors met ADB’s Equivalency and Acceptability requirements for CSS and were almost ready for use of CSS instead of ADB Safeguards. (For details, see summary). NGOs submitted close to 100 pages of detailed documentation showing that the ADB’s draft CSS analysis was incorrect. ADB claimed that NGO input would be used in a new draft CSS assessment but no updated draft has ever been circulated.
- Instead, the ADB moved further ahead and, based on the deeply flawed error-riddled draft March 2017 CSS assessment which was produced in violation of information disclosure and consultation requirements, ADB produced a further assessment that claimed to prove that Indonesia’s Energy Sector was ready for the use of CSS instead of ADB’s Safeguards.
- This new assessment of Indonesia’s Energy Sector, dated “November 2017” was disclosed to a small number of NGOs by email on Tuesday 5 December 2017 from a “Mia Rusmania” using a gmail address mia.rian1413@gmail.com. The email included as an attachment an Invitation Letter from the ADB Jakarta Resident Mission back-dated Monday 27 November (more than a week earlier than the email was sent) for a Monday December 11 “Stakeholder Consultation” on the proposed use of CSS for Indonesia’s energy sector through the National Electricity Company (Perusahaan Listrik Nasional). The invitation provided a link to 117 pages of documents upon which the “consultation” was to be based. Thus the documents were disclosed to a small number of invitees (not all of them on the invitation’s invitee list actually received the invitation) on Tuesday 5 December for a meeting on Monday 11 December, providing an unreasonably short period of 3 working days (Wed, Thurs, Friday) prior to the “consultation” to examine 117 pages of materials. Obviously, despite NGO objections to the March fake consultation on CSS, the ADB has still refused to engage in meaningful consultation and has set up yet another fake consultation on the CSS.
- During the so-called “consultation” on December 11 in Jakarta, ADB staff verbally informed attendees that two other “consultations” were occurring in Palembang and Kupang, however they provided no information on the dates or locations of these consultations, nor was any information about them posted on the ADB website. These were clearly not intended to be public consultations but rather small meetings with individuals and groups chosen by the ADB.

Safeguard violation: failure to fully disclose documents. Missing field studies & desk studies.

The documents provided a few working days prior to the 11 December so-called “consultation” describe and claim to summarize field and desk studies of 18 energy sector projects conducted for the assessment but *none*

² For details, see Brief Overview of the ADB’s Assessment of Environmental and Resettlement Safeguards in Indonesia’s Country System. Fake consultation: 3 to 6 work days of public notice; over 250 pages of documents; inaccurate Bahasa Indonesia version for Indonesian language consultation; agenda featuring repeated lengthy powerpoint presentations by government officials and little time for public comment; failure to disclose 100 pages of detailed field studies proving lack of equivalence between CSS and ADB requirements prior to the fake consultation.

of the 18 studies have been disclosed to the public. We note that this is similar to the events of the March 2017 fake consultation on CSS where the appendices 8 through 11 of the CSS assessment documents, containing the actual field studies of projects, were not made public prior to the ADB's CSS "consultation". When these studies finally were released in April 2017 after NGO protests, they were found to contain clear documentation of the lack of equivalence and poor track record of the Borrower, including in the Energy Sector. (See NGO Matrices regarding Equivalence and Acceptability of Indonesia's CSS for Environment and Resettlement which cite these findings directly.)

NGO analysis of the ADB's March 2017 field studies found that, not only did they identify the substantial lack of equivalence and acceptability, but the conclusions attached to the study and summarized in the other portions of the CSS assessment bore little relation to the ADB's own findings in the Appendices, instead claiming "equivalence" and "acceptability" despite the ADB's own clear data to the contrary, documented in the Appendices. Given that the ADB's March assessment appeared to invent "conclusions" unrelated to the actual data from their own field studies, it is ominous that, once again, the ADB's November assessment does not disclose any of the 18 studies but merely states "conclusions" from these studies.

To date, the only CSS study provided by the ADB on the Energy Sector was found in the Annexes to the March 2017 ADB CSS assessment and consisted merely of an assessment of a small 14-kilometer transmission line which, nonetheless impacted 800 people. The ADB assessment of this project found that no attention was paid to those affected by the project, there was no monitoring of impacts on any affected people, including on women, the poor, the vulnerable or those without title to land. The field study documented the routine violation of the most fundamental requirements of ADB's environmental and social safeguards. Yet, the ADB concluded that Indonesia's Energy Sector was ready for rapid application of Indonesia's CSS in place of ADB safeguards.

We note that the documents provided for the ADB's CSS PLN Energy Sector December 11 "consultation", only provide "conclusions" about the "findings" of the field and desk studies but the studies themselves are not disclosed, leading to substantial concerns that, once again, the ADB has failed to disclose their actual field and desk assessments of the energy sector projects which underpin ADB claims of CSS equivalence and adequacy in the energy sector. **The ADB must disclose the details of the 18 studies upon which their November 2017 CSS energy sector report is supposedly based. There has been no public consultation at all on these studies.**

Content Problems

1) Overwhelming Lack of Equivalence

The ADB's Safeguard Policy Statement requires CSS equivalence with objectives, scope, triggers and principles and acceptability of implementation track record:

*"Equivalence and acceptability are two prerequisites for deciding on the use of CSS. ADB would consider a borrower's CSS to be equivalent to ADB's if the former's system is designed to achieve **the same objectives and adhere to the policy scope, triggers, and applicable principles** set out in ADB's Safeguard Policy Statement. ADB also assesses the acceptability of borrower's implementation practice, track record, and capacity, before deciding on the use of the borrower's system."*

Yet, the ADB PLN CSS study admits **that Indonesia's CSS is only "fully equivalent" with a mere 3 of 12 mandatory ADB Involuntary Resettlement Principles and only 6 of 11 mandatory ADB Environment Principles** – a staggering lack of full equivalence with the majority of ADB Principles.³

³ ADB, Report on the Equivalence and Acceptability Assessments for the State Electricity Company of Indonesia (Consultation Draft), Appendix1: Consolidated Equivalence Assessment, para 12 re Environmental safeguards. The ADB claims "full equivalence" with 6 of 11 Environment Principles in paragraph 12 on "Aggregate Findings" but the "Aggregate Findings" regarding Resettlement in para 49 makes no reference to the number of safeguards with Full Equivalence, despite this being a CSS requirement. To calculate the number of

The lack of equivalence occurs as a result of the fact that the most basic safeguards are neither required nor implemented under Indonesia's CSS. Lack of equivalence throughout Indonesia's CSS identified by the ADB include:

- No requirement for meaningful consultation, including with the vulnerable, women, those without land title, free of coercion, as defined by the ADB;
- No attention to gender issues, impacts on women, who make up 50% of affected people and who likely bear more than 50% of project impacts;
- No attention to the poor, to the vulnerable – the supposed “beneficiaries” of development;
- Lack of attention to those without land title – the majority of Indonesian citizens and the vast majority of the poor;
- Complete lack of monitoring of impacts of forced resettlements on all impacted people.
- Failure to require 120 day public comment period on projects with significant impacts;
- Lack of biodiversity protection – causing Indonesia to become the largest deforestation site on earth.
- No requirement for a mitigation hierarchy, which requires – by law -- the top goal of *avoiding* environmental and social impacts and – only if, and only if, avoidance is not possible, reducing the impacts - including through meaningful consultation, free of coercion, as per ADB requirements.

2) Fatal Flaws in CSS: Lack of Meaningful Consultation and Attention to Women, the Poor, the Vulnerable, those Without Land Title

As one example, Principle 2 of ADB Involuntary Resettlement Safeguards requires an assessment of *all impacts on all parties, with special attention to vulnerable groups, women, and those without land titles* and *meaningful consultation* with these parties.

ADB SPS Resettlement Principle 2

*Carry out **meaningful consultations** with affected persons, host communities, and concerned nongovernment organizations. Inform **all displaced persons** of their entitlements and resettlement options. **Ensure their participation in planning, implementation, and monitoring and evaluation of resettlement programs.** Pay particular attention to the needs of vulnerable groups, especially those below the poverty line, the landless, the elderly, women and children, and Indigenous Peoples, and those without legal title to land, and ensure their participation in consultations. Establish a grievance redress mechanism to receive and facilitate resolution of the affected persons' concerns. Support the social and cultural institutions of displaced persons and their host population. Where involuntary resettlement impacts and risks are highly complex and sensitive, compensation and resettlement decisions should be preceded by a social preparation phase.*

,
Meaningful consultation is defined by the ADB as:

*Meaningful Consultation. A process that (i) begins **early in the project preparation stage** and is carried out on an ongoing basis throughout the project cycle; (ii) provides **timely disclosure** of relevant and adequate information that is understandable and readily accessible to affected people; (iii) is undertaken in an **atmosphere free of intimidation or coercion**; (iv) is **gender inclusive and responsive, and tailored to the needs of disadvantaged and vulnerable groups**; and (v) enables the **incorporation of all relevant views of affected people** and other stakeholders into decision making, such as **project design, mitigation measures, the sharing of development benefits and opportunities, and implementation issues**.⁴*

Clearly, **all aspects of Principle 2 and the other principles** apply to **all affected people with specific attention to women, the vulnerable and those without land titles**. Clearly, for all aspects of projects there is a requirement for **meaningful consultation in an atmosphere free of intimidation or coercion, gender inclusive and responsive and tailored to the needs of the vulnerable, ensuring the incorporation of the views of these people into project design and implementation**.

Resettlement safeguards with full equivalence in Indonesia's CSS, the reader must search throughout the document to find the relevant paragraphs for each Principle, i.e. paras 63, 75,84,93,98,103, 108,115,120,126,131 whereupon it can be discovered that the ADB has found that Indonesian CSS has Full Equivalence with only 3 of ADB's 12 mandatory Resettlement Principles – i.e. 25% Equivalence.

⁴ ADB, Safeguard Policy Statement, page 3

According to the ADB's assessment, Indonesian CSS does not meet these requirements and track record does not demonstrate capacity or will to comply with the requirements for mandatory meaningful consultation, free of coercion, with women, the vulnerable, those without land title in a manner which enables the incorporation of the views of affected people into decision making, including about project design and implementation.

The ADB documents this lack of equivalence in detail in Annex 8 to 11 of the March 2017 CSS assessment and in the November 2017 PLN CSS assessment, including with descriptions of the preponderance of government officials, including police and military (certainly not the required "atmosphere free of intimidation or coercion") at so-called "consultations" which feature the lack of women and the vulnerable, and are mere "socialization" sessions held in a government office, describing the "benefits" of a project and the (already decided-upon) project location.⁵

In a contorted and non-credible effort to demonstrate equivalence with ADB SPS requirements, this assessment divides Principle 2 into seven so-called "Key Elements" and attempts to show that –despite no requirements for meaningful consultation with or monitoring of resettlement impacts on the poor, women, those without land title – there is somehow "partial equivalence" with ADB requirements for sustainable development. The ADB requires **equivalence with each policy Principle**, however. Failure to involve or have meaningful consultation with the poor, the vulnerable, women in an environment free of intimidation where such input impacts project design and implementation means a lack of equivalence.

For example, the ADB states that PLN's Board of Directors Decree "requires *socialization* with the *entitled* parties"⁶. Of course, "socialization" is a one way flow of information about supposed project benefits from a project proponent to an affected party and is not remotely similar to meaningful consultation. "Entitled parties" appears to refer to those with land title only. The ADB PLN CSS assessment states that Law 2/2012, Perpres 71/2012 and PLN land acquisitions rules indicate that "The *announcement of the development plan* to local communities shall be undertaken at the preparatory phase of land acquisition. The announcement shall be conducted directly through *socialization*, face-to-face meetings or formal notices."⁷ This is not remotely a process of "meaningful consultation" with affected parties, women, the vulnerable to seek their input regarding decision-making on project location, land acquisition, etc.

Despite the fact that the ADB's own analysis shows that it is clear that the Indonesian country system *is not equivalent* with ADB SPS requirements for meaningful consultation with those impacted, including the requirements of ADB Resettlement Principle 2, the authors of the ADB assessment have invented a methodology to attempt to show "equivalence" by splitting each mandatory Principle into sections, so-called "Key Elements" and trying to find small phrases that they can claim are equivalent to Indonesia's CSS.

3) ADB Claims These Major Problems are merely "Minor Gaps", easily "filled"

In a stunningly cynical assessment, ADB's November 2017 draft assessment of Indonesia's CSS claims that these massive problems and gaping holes in safeguard requirements represent "small" "minor" gaps in equivalence:

- "a few minor gaps with regards to details surrounding the requirement for social impact assessment"⁸;
- At the same time, the ADB underscores that "new laws and presidential decrees and guidelines, ... do not ensure that impacts of all PLN business activities are assessed on women and vulnerable groups at the project level during the environmental assessment process... The legal framework, therefore, does not provide clear direction on how to identify vulnerable persons in the project area, assess impacts on them, nor does the system require that the gender dimension be factored into the social impacts assessment. However, **these gaps are very small** and do not require any changes to the legal framework, and can be addressed by providing specific guidance to PLN on the matter."⁹

⁵ ADB, Report on the Equivalence and Acceptability Assessments for the State Electricity Company of Indonesia (Consultation Draft), Appendix1: Consolidated Equivalence Assessment.

⁶ ADB, Report on the Equivalence and Acceptability Assessments for the State Electricity Company of Indonesia (Consultation Draft), Appendix1: Consolidated Equivalence Assessment. para 66

⁷ ADB, Report on the Equivalence and Acceptability Assessments for the State Electricity Company of Indonesia (Consultation Draft), Appendix1: Consolidated Equivalence Assessment. Para 67.

⁸ ADB, Report on the Equivalence and Acceptability Assessments for the State Electricity Company of Indonesia (Consultation Draft), Appendix1: Consolidated Equivalence Assessment, para 29.

⁹ ADB, Report on the Equivalence and Acceptability Assessments for the State Electricity Company of Indonesia (Consultation Draft), Appendix1: Consolidated Equivalence Assessment, para 29.

4) So-called “Gap-filling measures”: Not credible

Despite decades of track record of failure to implement the most fundamental aspects of environmental protection (leading, among other things, to Indonesia having the highest deforestation rate on earth and tremendous urban environmental pollution, including in Jakarta) and failure to require or enforce core aspects of social protection, attention to needs and rights of women, the vulnerable, those without title to land (leading to thousands of conflicts where the threat of violence is routinely used to force the poor from their lands), this flawed draft study claims that all of these failures represent “minor gaps” in equivalence with mandatory ADB requirements which can be easily “filled”.

In addition to the outrageous assertion that failing to involve, monitor impacts upon, or ensure that livelihoods are improved and not destroyed for the poor, the vulnerable (ostensible “beneficiaries” of development), for women (50% of the affected), those without land title (the vast majority of Indonesia’s poor), the ADB’s draft analysis claims that, unlike the ADB-supported legislative changes the Bank felt necessary to protect the interests of project proponents, no legislative changes are needed to overcome these “minor” problems.

Instead, astonishingly, the ADB claims that the use of voluntary “Corporate Social Responsibility” programs and funds (which, in the case of PLN may not be used for compensation purposes according to PLN) will be a key “gap-filling measure” to make up for resettlement impacts on the poor and vulnerable:

“54. PLN’s corporate social responsibility (CSR) program can be used to ensure that affected people from PLN infrastructure projects receive compensation and support”.¹⁰

PLN’s Corporate Social Responsibility program documents indicate that CSR funds cannot be used for compensation¹¹ and that PLN’s internal “Indicators of Success” for each CSR program are:

- Decrease in loss / theft of electricity
- Unpaid use is reduced
- Smart power consumption and power increase
- Good stakeholder relations
- Timely project schedule
- Public concern about electricity saving movement
- Electrification ratio increased
- The use of fuel as primary energy source down.¹²

In addition to recommending the use of PLN’s CSR Program, ADB also claims that the so-called “minor gaps” in Indonesia’s environmental and social protections can be “filled” by the issuance of internal agency rules or decrees - i.e. decrees by the Board of Directors of Indonesia’s notorious National Electricity Company (PLN) or by the development of “Comprehensive Guidance” by PLN which, according to the ADB’s assessment, will be sufficient to reverse Indonesia’s well-documented track record and lack of legal requirement for the fundamental underpinnings of safeguard compliance. These claims are not credible.

5. “Gap-Filling” in conditions of routine failure of rule of law: not credible; “Gap-filling” as violation of principle of rule of law;

Neither the ADB’s November 2017 PLN CSS assessment, nor the ADB’s March 2017 CSS conclusions and matrix of “equivalence” between Indonesia’s CSS and ADB Safeguards describe the **routine failure of the rule**

¹⁰ ADB, Report on the Equivalence and Acceptability Assessments for the State Electricity Company of Indonesia (Consultation Draft), Appendix1: Consolidated Equivalence Assessment, para 54.

¹¹ PLN Corporate University, “Corporate Social Responsibility”, October 12, 2016. Bantuan yang diberikan harus dalam bentuk aksi program **tidak berupa ganti rugi uang tunai**. “Funds given must be in the form of program actions and **not in the form of cash compensation**.” (Emphasis in original.)

¹² PLN Corporate University, “Corporate Social Responsibility”, October 12, 2016.

Indikator keberhasilanProgram CSR [Indicators of Success of CSR Program], pg.17

of law and the resulting destruction of the environment and negative impacts upon the poor, women, and other vulnerable populations from forced evictions which are currently occurring in Indonesia, some of which was documented in the field studies in the Appendices of the ADB's own March 2017 report. The claim that "gap filling" measures such as the use of PLN "Corporate Social Responsibility" programs or PLN internal agency directives will overcome the failure of the rule of law is not credible.

6. ADB's Continuing Failure to Assess Violence by Security Forces in CSS Analysis

The ADB's November and March 2017 CSS assessments **fail to analyse the significant role of violence by security** forces in land seizures, forced evictions, and the long and well known record of human rights violations, including in the energy sector. In all sectors "researched" by the ADB in March 2017, forced evictions involving security forces (military, police, Sat Pol and armed thugs) have led to an increase in conflicts, and devastating impacts on the lives and livelihoods of project-affected peoples, but there is no analysis of this in the study.

Throughout the ADB's March 2017 CSS assessment, the Bank repeatedly praises the controversial Law 2 of 2012 which, according to civil society assessment, has done extraordinary damage to the rights and livelihoods of project-affected peoples and has introduced major loopholes, including the use of court escrow accounts in lieu of fair compensation, to assist project proponents to avoid meaningful consultation and proper compensation for assets seized for a project.¹³

*"Land conflicts in Indonesia have risen over the last ten years, as private investors and the government have acquired large tracts of land without respecting the rights and interests of local users. In 2013 alone, land conflicts in Indonesia caused 22 deaths due to violent clashes and involved almost 140,000 households, according to Agrarian Reform Consortium (KPA) figures. [In the past 10 years], the organisation recorded 1391 land conflicts causing 70 deaths, involving five million hectares of disputed land and 926,700 households."*¹⁴

Given rapacious land-grabbing for projects and plantations, other observers have identified "*conflict over land rights in around 18,000 villages in Indonesia.*"¹⁵ A coalition of Indonesia's most prominent environmental and human rights organizations filed a case with Indonesia's Constitutional Court in an effort to overturn the new Land Acquisition Law 2 of 2012, arguing that under the new law, the government does not involve the public or the party entitled to the land in the land acquisition planning process and, instead, only involves the parties that seek to take over the land.¹⁶ To no one's surprise, given the record of the judiciary in Indonesia, the court rejected civil society's claims in 2013.

7. Lack of mitigation hierarchy to avoid impacts: Land acquisition and evictions

Unlike the ADB's SPS requirements, the Indonesian legal system and track record of implementation provide no mitigation hierarchy to meet the ADB's requirement to "*avoid involuntary resettlement wherever possible.*"

8. Landgrabbing: Lack of compensation at replacement value prior to eviction.

Neither the ADB's November 2017 PLN CSS Assessment nor their March 2017 CSS assessment provide any analysis whatsoever of the impact of the routine circumvention of the provision of full compensation at market replacement cost prior eviction. This is an extraordinary oversight given that the ADB **requirement for compensation prior to forced resettlement is routinely circumvented** with the increasingly prevalent strategy

¹³ ADB, Country Safeguards Review (CSS): Draft Final Report Indonesia, March 2017, para 22 etc.

¹⁴ Inside Indonesia, "An agrarian reform agenda for Jokowi", December 2014. See also Mongobay, "Inside Indonesia's highest profile land conflict", 7 December, 2015.

¹⁵ Rob Finlayson, "Rapid Land Tenure Assessment adopted by the Indonesian Ministry of Forestry", August 7, 2014, <http://blog.worldagroforestry.org/index.php/2014/08/07/rapid-land-tenure-assessment-adopted-by-the-indonesian-ministry-of-forestry/>

¹⁶ Jakarta Post, Land Acquisition Law in line with the Constitution: Court, Feb. 14, 2013.

facilitated by the controversial Law 2 of 2012 on Land Acquisition where a project proponent, instead of providing replacement land for those with land-based livelihood or providing prompt asset compensation equivalent to asset replacement cost, simply places a unilaterally determined sum of money (not replacement cost of assets) in an escrow account at a district court, despite:

- no meaningful public input into the location/siting of a project;
- no agreement with a community regarding resettlement;
- no agreement regarding asset valuation or method (i.e. land for land versus cash);
- no agreement regarding amount of compensation; The Indonesian requirement for compensation does not meet the ADB's requirement of “**replacement of assets with access to assets of equal or higher value**” but, instead, uses a value determined by the government.
- no decision by affected communities to engage with Indonesia's notorious court system.

With the deposit of funds in an escrow account, “compensation” is considered “paid” and eviction occurs prior to receipt of compensation by affected communities, a clear violation of ADB SPS requirements to prioritize land-for-land compensation and all compensation must be made at asset replacement value *prior to resettlement*.

9) Manufacturing fake equivalence by dividing up policy requirements into small pieces and trying to find small “equivalent” phrases despite an overall context of lack of equivalence.

The ADB's November 2017 PLN CSS assessment as well as their earlier field studies presented in March 2017, not to mention the public record, and NGO investigations all show this clear lack of equivalence. The ADB consultants who drafted the November 2017 ADB PLN CSS study conclude that Indonesia's CSS is fully equivalent with a mere 25% of ADB resettlement requirements and less than half of all ADB Environment and Resettlement requirements combined. However, given these dismal findings, they engage in “slight of hand” manipulation to attempt to make it seem that there is a higher level of equivalence. They do this by dividing up each Principle into several parts (so-called “Key Elements” – KEs) and work to find pieces or scraps of principals for which equivalence can be claimed instead of considering equivalence with each Principle as required by ADB safeguards. This appears to be one way that the ADB Consultants attempt to falsely claim “equivalence” with small parts of the SPS while obscuring and attempting to ignore the clear and gross lack of equivalence – including the near complete lack of attention to most of the supposed “beneficiaries” of development – the poor, the vulnerable, women and those without land title. An example of this data manipulation:

*“12. Aggregate Findings. ADB's environmental safeguards contain 11 policy principles. The national legal framework for environmental safeguards is **fully equivalent with six of these policy principles** and partially equivalent with five. However, this ratio underrepresents the extent of equivalence given the nature of most of the policy principles. **When disaggregated into their 41 KEs, the national legal framework is fully equivalent with 35 of the 41, and partially equivalent to only 6 out of 41 the KEs.**”¹⁷*

A closer examination of the example of some of the policy principles (below) can illustrate the problems with this approach. The approach only works if, for example, a policy principle requires monitoring of, say, impacts on the vulnerable, women, those without land. By dividing up the requirement the ADB can claim that there is, indeed, a requirement for “monitoring” – for example of the amount of land appropriated for a project – and despite no requirement for monitoring the impacts of such land appropriation on women, the poor, the vulnerable, those without title, “monitoring” (of amount of land seized for a project) occurs. By chopping up the principle into parts, the ADB can claim “partial equivalence” with the principle – i.e. because some form of monitoring (about land) occurred, despite the total lack of equivalence with the principle which requires monitoring of the impacts on women, the vulnerable, those without land and ensuring their livelihood enhancement or restoration. Thus the ADB's statement on the “Aggregate Findings” on Resettlement Equivalence are as follows:

¹⁷ ADB, Report on the Equivalence and Acceptability Assessments for the State Electricity Company of Indonesia (Consultation Draft), Appendix1: Consolidated Equivalence Assessment, para 12

“D. INVOLUNTARY RESETTLEMENT SAFEGUARDS

49. Aggregate findings. The twelve involuntary resettlement policy principles are broken down into 36 key elements. The aggregate finding from the equivalence assessment is that the Indonesian laws and related PLN regulations for land acquisition/involuntary resettlement are fully equivalent to 25 out of 36 key elements, and 11 key elements are partially equivalent. There is no key element considered not equivalent.”¹⁸

We note that paragraph 49 above is completely missing from the Indonesian translation of this document and is found only in the English language version. The Indonesian version eliminates this paragraph and replaces it with a translation of paragraph 50. This can be seen below:

D. INVOLUNTARY RESETTLEMENT SAFEGUARDS

49. **Aggregate findings.** The twelve involuntary resettlement policy principles are broken down into 36 key elements. The aggregate finding from the equivalence assessment is that the Indonesian laws and related PLN regulations for land acquisition/involuntary resettlement are fully equivalent to 25 out of 36 key elements, and 11 key elements are partially equivalent. There is no key element considered not equivalent.

50. **Specific findings.** Following are the specific findings of the equivalence assessment of PLN land acquisition and involuntary resettlement policy against ADB involuntary resettlement safeguards.

C. INVOLUNTARY RESETTLEMENT SAFEGUARDS

49. **Temuan Rinci.** Temuan rinci tentang keselarasan pengadaan tanah PLN dan prinsip kebijakan pemukiman kembali tidak dengan sukarela ADB diuraikan selanjutnya.

This represents yet another fatal error in translation which can give rise to misunderstandings about the results of this evaluation.

Please note that in the parallel paragraph regarding “aggregate findings” of equivalence with Environment Safeguards (cited above) the ADB claims “full equivalence” of CSS with 6 of 11 Environment Principles but, unlike the Environment assessment, the “Aggregate Findings” regarding Resettlement (above) fails to indicate the number of ADB Resettlement Safeguards with which the CSS is in Full Equivalence, despite this being a CSS requirement. The only way for a reader to find this important information is to search throughout the document to find the relevant paragraphs for each Principle, i.e. paragraphs 63, 75,84,93,98,103, 108,115,120,126,131 whereupon it can be discovered that the ADB has found that Indonesian CSS has Full Equivalence with only 3 of ADB’s 12 mandatory Resettlement Principles – i.e. 25% of ADB Resettlement Principles. This crucial fact is not presented in the “Aggregate Findings” and is, instead, obscured by the slight of hand where each mandatory principle is chopped up into small pieces in order to generate the appearance of equivalence with ADB’s Resettlement Safeguards despite the overwhelming lack of equivalence with the core requirements pertaining to the actual impact of projects upon the poor, the vulnerable, women and the landless – i.e. all of the supposed “beneficiaries” of development financed by the ADB.

10) Lack of SPS Compliance - Inventing New Weak Measures: “Broad Alignment” instead of SPS Required “Equivalence.” Example: Lack of Equivalence with ADB Resettlement Objectives

The ADB is required to demonstrate equivalence between CSS and ADB Objectives. The ADB CSS PLN assessment, however, fails to demonstrate equivalence and, instead, merely claims that there is “broad alignment” between CSS and ADB Objectives.¹⁹ The assessment therefore fails to comply with the mandatory SPS requirement that the Borrower System “*is designed to achieve the same objectives” as the ADB SPS, and therefore fails to meet the ADB’s clear requirements for the use of Country Systems*. The SPS does not require “broad alignment” but rather the “same objectives”.

¹⁸ ADB, Report on the Equivalence and Acceptability Assessments for the State Electricity Company of Indonesia (Consultation Draft), Appendix1: Consolidated Equivalence Assessment, para 49.

¹⁹ ADB, Report on the Equivalence and Acceptability Assessments for the State Electricity Company of Indonesia (Consultation Draft), Appendix1: Consolidated Equivalence Assessment. Para 51. Apparently creating new rules for themselves, the authors state “For purposes of comparing the Indonesian CSS with the ADB’s SPS with respect to policy objectives, scope and triggers, a finding based on “broad alignment” is considered more appropriate than “equivalence.” The word “equivalence” is reserved for SPS policy principles as these are prescriptive requirements rather than policy objectives. The findings of alignment are not included in the quantitative summary of equivalence.” Footnote 17. This does not meet SPS requirements.

ADB Resettlement Objectives: To **avoid involuntary resettlement wherever possible**; to **minimize involuntary resettlement by exploring project and design alternatives**; to **enhance, or at least restore, the livelihoods of all displaced persons in real terms relative to pre-project levels**; and to **improve the standards of living of the displaced poor and other vulnerable groups**.

Not only does the Indonesian legal system provide no mitigation hierarchy which begins with the primary goal to “avoid involuntary resettlement wherever possible”, the ADB’s own assessment finds that none of the requirements in bold font, above, are Indonesian CSS requirements:

ADB: “The Indonesian legal framework does not provide for resettlement assistance for displaced persons.”²⁰

ADB: “28. With regard to the practice of “land clearing” (also referred to as forced eviction, this is the act of moving unauthorized/illegal occupants—including long-term occupants from a piece of land or and area, such as agriculture land, farm land, forest land, or otherwise) who have occupied the land for a period of time. **These persons without land rights are also called squatters**.³⁴ The provisions of Law 2 of 2012 on land acquisition for development of public use **do not apply to squatters**, since the land is already owned by an entity that needs the land for a project. ... Article 4 of Law 51 of 1960 stipulates that illegal occupants must move any objects on the occupied land and leave the land on their own resources—meaning that they must bear all costs related to the movement of their belongings. Article 6 of Law 51 stipulates that illegal occupants could be charged with “criminal offense.” As such, all “illegal occupants” are not entitled any assistance, transitional support, and other assistance.”²¹

ADB: “The Indonesian legal framework contains **no clear provision for including an income and livelihood strategy** for displaced persons in the resettlement plan.”²²

ADB: “The Indonesian legal framework does **not provide for comparable access to employment** and production opportunities.”²³

ADB: “14. Law 2 of 2012 requires detailed analysis of the risks and impacts to affected communities; it does not explicitly discuss the need for analysis of affects to particular community groups (**such as vulnerable groups**). **As such, it does not specifically require gender analysis**.”²⁴

All of the field study cases which were analysed in Appendices 8 – 11 in the March 2017 ADB assessment demonstrate that a complete lack of any analysis regarding gender issues, impacts on women or monitoring of the fate of the women impacted by the projects in the energy, water, transportation and urban sectors. The same is true of the 18 cases mentioned in the November 2017 ADB PLN CSS assessment Appendices.

ADB concludes that: “The Indonesian legal framework **does not require monitoring of land acquisition / resettlement impacts to the livelihoods and living standards of displaced persons** and does not address whether the objectives of the resettlement plan have been achieved.”²⁵

11) Faked Acceptability “Ratings” – Where “Moderate Acceptability” Is Code for “Weak / Unacceptable”

The ADB assessment utilizes a warped system of assessment with three possible characteristics – Strong, Moderate and Weak -- where weak and unacceptable characteristics of a Borrower System documented by the

²⁰ ADB, Country Safeguards Review: Indonesian Consultation Draft, March 2017, para 28

²¹ ADB, Country Safeguards Review: Indonesian Consultation Draft, March 2017, Appendix 6: Equivalence Assessment for Involuntary Resettlement Safeguards, para 28

²² ADB, Country Safeguards Review: Indonesian Consultation Draft, March 2017, para 28

²³ ADB, Country Safeguards Review: Indonesian Consultation Draft, March 2017, para 28

²⁴ ADB, Country Safeguards Review: Indonesian Consultation Draft, March 2017, Appendix 6: Equivalence Assessment for Involuntary Resettlement Safeguards, para 14, hal 8

²⁵ ADB, Country Safeguards Review: Indonesian Consultation Draft, March 2017, para 28

ADB's own field studies and desk studies are, instead, given an inflated rating of "moderate" despite weak and unacceptable characteristics including those pertaining to Involuntary Resettlement. Please note that due to the time constraints imposed by the unacceptable 3 workday public notice prior to the fake consultation, this assessment is preliminary in nature and does not cover all aspects of the PLN CSS assessment. A few examples of weak / unacceptable capacity falsely rated as "moderate" in the ADB's CSS PLN assessment include those below. There are many more examples.

PLN's lack of "institutional capacity" for safeguards: After admitting that "The primary sources of information for the assessment of PLN's institutional structure were PLN documents" and claiming that PLN's "Corporate Social Responsibility (CSR) Division...is responsible for supporting...the mitigation of involuntary resettlement impacts", the ADB found that there was only "An **ad hoc unit** or focal point responsible for the social safeguards in HQ and/or regional office with **no institutional structure**."²⁶ Yet somehow, the ADB rated this "no institutional structure" not as weak/unacceptable but as "moderately acceptable".

Weak qualification of PLN staff and consultants: Admitting that there is a "limited number of technically trained social safeguards staff allocated to appropriate social safeguards units within PT PLN", that most have graduate degrees or work experience in "business, economy...law, management, civil engineering...or technical fields" and that consultants were therefore used but "many consultants lack good knowledge on Indonesian legal framework and international practices for social safeguards" and "the number of social safeguards consultants are still limited" and that PLN staff knowledge "on legal framework, livelihood restoration program, gender, relocation strategy is still weak" ADB rated the "number and qualification of staff" not as "weak" but as "moderate".²⁷

Inadequate/non-existent PLN safeguard budgets: Despite examining the financial resources PLN makes available for safeguards work and concluding that the "budget has been allocated but is inadequate or not used effectively to support activities of the social safeguards units", that PLN's Finance Division "does not maintain that information" on safeguards budgets, that only one of PLN's 18 UIP (Development Units) had a budget of 7.5% of project costs for "land acquisition and IR safeguards" and "it was not feasible to compile and assess budget information from the other UIPs", the missing and inadequate budgets were "rated" as Moderately acceptable!²⁸

Lack of training for staff on IR safeguards, failure to include basic safeguard information: Despite finding that PLN "**has no training center** but has outsourced for training and education and has capacity-building programs to improve/upgrade their human resources, but they **are not effectively implemented**" and finding that the so-called "courses on land acquisition and IR Safeguards ... **do not provide detailed training on feasibility studies, social impact assessment, attention to gender issues and vulnerable groups, income/livelihood restoration, and monitoring**", staff training is not rated as "weak/unacceptable" but, instead, as "moderate".²⁹ One wonders, indeed, given the list of everything that is NOT taught in "safeguards courses", what, exactly, is the content of these courses? If this is "moderately" acceptable, what would "weak" look like?

PLN's inadequate feasibility studies: The assessment states that feasibility studies ("screening and categorization") must, by law, include a "complete social-economic survey, location feasibility, analysis of cost and development benefit to the area and the community, estimated land value, environmental and social impacts that arise out of the Acquisition of land and constructions" per Article 15(2) Law 2 of 2012.³⁰ The ADB assessment concludes that PLN does not satisfy "international best practices with special attention to vulnerable

²⁶ ADB, Report on the Equivalence and Acceptability Assessments for the State Electricity Company of Indonesia (Consultation Draft), Appendix 3: Involuntary Resettlement Acceptability Matrix, Item A1

²⁷ ADB, Report on the Equivalence and Acceptability Assessments for the State Electricity Company of Indonesia (Consultation Draft), Appendix 3: Involuntary Resettlement Acceptability Matrix, Item A3, pages 7 - 12

²⁸ ADB, Report on the Equivalence and Acceptability Assessments for the State Electricity Company of Indonesia (Consultation Draft), Appendix 3: Involuntary Resettlement Acceptability Matrix, Item A3, pages 12-14

²⁹ ADB, Report on the Equivalence and Acceptability Assessments for the State Electricity Company of Indonesia (Consultation Draft), Appendix 3: Involuntary Resettlement Acceptability Matrix, Item A3, pages 14-15.

³⁰ ADB, Report on the Equivalence and Acceptability Assessments for the State Electricity Company of Indonesia (Consultation Draft), Appendix 3: Involuntary Resettlement Acceptability Matrix, Item B1, page 16

people, livelihood restoration programs for vulnerable APs and gender equality.”³¹ “In general, socio-economic surveys were not robust at this stage in all the case study projects... did not identify gender issues and vulnerable groups. For all seven feasibility studies for transmission line projects, no gender analysis was done.... For the four power generation projects... vulnerable groups were not identified and there was no specific consideration of gender issues... In general, for all types of projects, feasibility studies do not specifically identify vulnerable people and there is no specific information on gender and vulnerability.”³² Yet, instead of being rated “weak” or “unacceptable” PLN’s inadequate feasibility studies are rated “moderate”.³³

PLN Land Acquisition Plan Without Consultation: No mention of meaningful consultation. Only “During implementation, PLN in conjunction with contractors, facilitates planning the alignment and design of distribution lines in close coordination with village heads and relevant government agencies.” “No gap is identified” despite the lack of any mention of meaningful public consultation, free of intimidation, with special attention to women, the vulnerable and those without land title.³⁴ We note that one government agency, PLN, “coordinating” with other government agencies and officials cannot remotely be considered any form of “meaningful consultation”. Despite these obvious and enormous violations of the principle of “meaningful consultation”, the ADB calls this “moderate” instead of “weak”.

Establishment of Land Acquisition Preparatory Team: No mention of meaningful consultation. Only “Land Acquisition Preparation team consists of Bupati/Mayor, respective UIP needing land, and other related offices established by the governor to do the sub-project within 10 days after the land acquisition plan document submission.” “No gap is identified” despite the lack of any mention of meaningful public consultation, free of intimidation, with special attention to women, the vulnerable and those without land title.³⁵ LAP Team consists solely of government officials. ADB calls this “moderate” instead of “weak”.

PLN’s weak disclosure of Development Plans: The ADB requires public disclosure of draft plans, and for projects with substantial impacts, disclosure must occur 120 days prior to decision-making. Meaningful public consultation is required at the earliest stages of project planning, including to influence the location of a given project. ADB notes that “Notification of the plan should include information onthe location of areas to be acquired, land acquisition stages, estimated land acquisition implementation time” but there is no reference to meaningful public consultation regarding project alternatives, the no project alternative, alternate locations for land acquisition or any public involvement in decision making regarding the development plan. No information is provided regarding the timing of disclosure – i.e number of days prior to decision-making that disclosure occurred in the cases studied. The ADB finds “no gap” with ADB SPS requirements yet finds that:

*“Three of the distribution line projects assessed have documented evidence of initial disclosure; one did not have that information. For the three distribution line projects that had documented the process, initial disclosure was done informally and formally during the location survey and was announced in the village office and mosque. For all transmission line projects assessed, the preparatory team announced the development plan and its objective, proposed location area for the development, land acquisition process, estimated land acquisition timeframe, and requirement of the affected people’s agreement for the location of the development plan.
Gap: No gap identified.”³⁶*

³¹ ADB, Report on the Equivalence and Acceptability Assessments for the State Electricity Company of Indonesia (Consultation Draft), Appendix 3: Involuntary Resettlement Acceptability Matrix, Item B1, page 16

³² ADB, Report on the Equivalence and Acceptability Assessments for the State Electricity Company of Indonesia (Consultation Draft), Appendix 3: Involuntary Resettlement Acceptability Matrix, Item B1, page 16

³³ ADB, Report on the Equivalence and Acceptability Assessments for the State Electricity Company of Indonesia (Consultation Draft), Appendix 3: Involuntary Resettlement Acceptability Matrix, Item B1, page 16

³⁴ ADB, Report on the Equivalence and Acceptability Assessments for the State Electricity Company of Indonesia (Consultation Draft), Appendix 3: Involuntary Resettlement Acceptability Matrix, Item B2, page 17.

³⁵ ADB, Report on the Equivalence and Acceptability Assessments for the State Electricity Company of Indonesia (Consultation Draft), Appendix 3: Involuntary Resettlement Acceptability Matrix, Item B2, page 17.

³⁶ ADB, Report on the Equivalence and Acceptability Assessments for the State Electricity Company of Indonesia (Consultation Draft), Appendix 3: Involuntary Resettlement Acceptability Matrix, Item B2.2, page 19.

To repeat: the “initial disclosure” for 3 of 4 transmission projects was “informal” – whatever that means -- certainly not equivalent to ADB requirements. “Formal” disclosure only occurred via village government office and mosque during, but not prior to, the “location survey”. This “disclosure” clearly did not involve a meaningful consultation with specific attention to women, the vulnerable and those without land title, but rather was an announcement by the government’s preparatory team about the (already decided upon?) location, timeframe and “requirement of the affected people’s agreement”. This is not close to ADB requirements for information disclosure, meaningful consultation with attention to women, the vulnerable and those without land title. Yet, again, this is summarized as “moderate” instead of weak.

Lack of PLN meaningful consultation: Making contradictory claims, the ADB assessment states, on the same page that “All the power generation projects assessed conducted meaningful consultation” but that “No special attention was paid to women and vulnerable groups.”³⁷ The report continues, “For distribution lines, consultation on the project plan is conducted at the village office. Communities and affected people were consulted. However, some of communities in the affected area of one of the distribution line projects stated that they **did not know about the project**. ... In the existing electricity connection areas, often written **permission from the land owners is not obtained** for additional the transformer installations. In all four of the transmission line projects assessed, affected persons and the communities at large were consulted, and basic information about the projects was shared.”³⁸ Yet, **“None of the projects assessed gave special attention to vulnerable groups including poor, indigenous peoples, household headed by women, household headed by elderly, landless, and women during the consultation processes....**There is no requirement to give special attention to the participation of vulnerable groups and women in consultation processes.”³⁹ Obviously, these socialization processes, held in the village office, without reference to the supposed “beneficiaries” of development – i.e. the poor, the vulnerable, and 50% of the population (women) -- do not meet ADB’s requirement for meaningful consultation. This is unacceptable, not “moderate” as rated by the ADB.

PLN’s poor grievance handling for project location determination: ADB concludes “Grievance for location determination is not handled adequately” yet does not rate this as “weak” but rather as “moderate”.⁴⁰

PLN’s failure to ensure livelihood improvement or restoration: According to the ADB, PLN conducts no “monitoring of impacts and outcomes of land acquisition” for projects financed by PLN. “Therefore, there is no record to indicate whether the affected persons have a better standard of living or not. For all projects assessed – power generation, transmission, and distribution lines – no monitoring has been done to assess the standards of living of affected persons after compensation was provided”... “for projects fully funded by PLN, there is no monitoring of land acquisition impacts on the living standards of entitled parties, especially vulnerable groups.”⁴¹ Obviously, this is weak and unacceptable, yet the ADB summarizes this as “moderately acceptable”! PLN has a long history of land grabbing and violent conflicts with local communities. The ADB clearly documents PLN’s unacceptable and consistent track record of a total lack of monitoring impacts of their projects on women, the poor and vulnerable. These observations fit closely with PLN’s dismal environmental and social track record and underscore the lack of credibility of any recommendation to utilize “country systems” in the energy sector instead of ADB environmental and social safeguards.

PLN Grievance Mechanism regarding Compensation: The ADB claims (without evidence or references) that “in power plants and transmission line projects, the grievances related to compensation have been settled at the project level” and that “PLN’s complaint mechanism for power generation projects is quite rigorous” but that “there is no system for maintaining records of grievances after they are resolved. As of 2017, once a grievance is

³⁷ ADB, Report on the Equivalence and Acceptability Assessments for the State Electricity Company of Indonesia (Consultation Draft), Appendix 3: Involuntary Resettlement Acceptability Matrix, Item B2.4, page 19.

³⁸ ADB, Report on the Equivalence and Acceptability Assessments for the State Electricity Company of Indonesia (Consultation Draft), Appendix 3: Involuntary Resettlement Acceptability Matrix, Item B2.4, page 19.

³⁹ ADB, Report on the Equivalence and Acceptability Assessments for the State Electricity Company of Indonesia (Consultation Draft), Appendix 3: Involuntary Resettlement Acceptability Matrix, Item B2.4, page 19.

⁴⁰ ADB, Report on the Equivalence and Acceptability Assessments for the State Electricity Company of Indonesia (Consultation Draft), Appendix 3: Involuntary Resettlement Acceptability Matrix, Item B2.6, page 21

⁴¹ ADB, Report on the Equivalence and Acceptability Assessments for the State Electricity Company of Indonesia (Consultation Draft), Appendix 3: Involuntary Resettlement Acceptability Matrix, Item D.1, page 29

resolved, PLN does not keep any records concerning it.”⁴² Given the well-documented land conflicts and lack of compensation for communities affected by PLN projects, the complete lack of record-keeping on grievances and grievance resolution is unacceptable and extraordinarily weak, yet it is summarized as “moderate” by the ADB.

PLN’s Lack of Monitoring and Reporting on Land Acquisition Impacts: According to the ADB’s PLN assessment, “There is no monitoring of the impact of land acquisition on the living standard of the related parties. For all power generation, transmission, and distribution line projects assessed, no monitoring reports had been prepared and there was a general lack of attention to vulnerable groups and gender. ... For projects financed by PLN, monitoring reports were not disclosed to the entitled parties.. There is no regular disclosure of monitoring reports on the PLN website.” Despite this unacceptable performance, in violation of key ADB safeguard requirements, the ADB rated PLN’s non-existent monitoring and reporting on land acquisition impacts as “moderate”.

The above are but a few examples of the many times throughout the ADB’s CSS analysis that the ADB analysts reach conclusions completely unrelated to their own field data, and falsely summarize the ADB’s own research results, rendering this analysis completely without credibility or legitimacy.

12. Financial Intermediaries: Indonesian Environmental Assessment Requirement Does Not Apply to Financial Intermediaries.

According to the ADB’s March 2017 CSS Assessment, Indonesia’s AMDAL EIA analysis requirement “is not applicable” to financial intermediary projects.⁴³ By contrast, ADB requires impact assessment for financial intermediary projects. This is a significant problem given the involvement of financial intermediaries in infrastructure in Indonesia, including in the energy sector. Clearly, this is another important example of how CSS Indonesia is not equivalent to ADB requirements.

For questions, corrections or comments, please contact:

Indonesian Legal Resource Center (ILRC): sitiaminah.tardi@gmail.com

Wahana Lingkungan Hidup Indonesia (WALHI): edo.walhi@gmail.com

WALHI West Java: meikipaendong@gmail.com

WALHI Makassar: muhammad.al.amien@gmail.com

Lembaga Studi dan Advokasi Masyarakat (ELSAM): andi@elsam.or.id

DebtWATCH Indonesia: dianagoeltom@gmail.com

Yayasan PUSAKA: angkytm@gmail.com

TuK Indonesia: wiwin@tuk.or.id

Ulu Foundation: stephanie@ulufoundation.org

⁴² ADB, Report on the Equivalence and Acceptability Assessments for the State Electricity Company of Indonesia (Consultation Draft), Appendix 3: Involuntary Resettlement Acceptability Matrix, Item D.2., page 30

⁴³ ADB, Country Safeguards Review (CSS): Draft Final Report Indonesia, March 2017, Appendix 8, page 7.